

Nos. 01-20-00004-CR and 01-20-00005-CR

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CHRISTOPHER A. PRINE
Clerk

In the Court of Appeals
For the First District of Texas
At Houston

—◆—
Nos. 1657519 and 1657521
In the 338th District Court
Of Harris County, Texas

—◆—
***Ex parte* Joseph Eric Gomez**
Appellant

—◆—
Emergency Motion
For “Immediate Consideration and Decision”
Of State’s Motion to Stay Mandates

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Rule 31.4 requires this Court to immediately consider and determine the State’s motion to stay the mandate. The Rule does not allow a ten-day delay for a response.

This Court issued mandates and opinions in this case at the same time on the afternoon of Friday, August 7. On Monday, August 10, the State filed a petition for discretionary review in the Court of Criminal Appeals. The State then filed a motion in this Court, pursuant to Rule 31.4, to stay the mandates.

Today (August 11), this Court has requested a response from the appellant to that motion. The request gave the appellant until August 21.

Rule 31.4 does not allow this Court to wait ten days for a response. Rule 31.4 requires immediate determination.

The ordinary rule is that a court should not “hear or determine a motion until 10 days after the motion was filed.” TEX. R. APP. P. 10.3(a). That Rule provides three generalized exceptions, one of which is if the motion is an emergency.

But Rule 31.4 provides its own specific timeline for a decision:

The clerk [of the appellate court] must promptly submit the motion and appendix to the court of appeals, or to one or more judges as the court deems appropriate, **for immediate consideration and determination.**

TEX. R. APP. P. 31.4(b)(emphasis added).

This specific command for immediate consideration and determination controls over the more general requirement for a ten-day response time. *See* TEX. GOV'T CODE § 311.026(b) (where general and special statutory provisions are irreconcilable, special provision will prevail); *Mercier v. State*, 96 S.W.3d 560, 562 (Tex. App.—Fort Worth 2002, pet. struck) (“In order to construe a rule of appellate procedure, we use statutory construction.”).

Alternatively, Rule 31.4’s requirement of immediate determination could be read as an implicit statement that a motion to stay the mandate after a trial court’s bail decision is reversed is an emergency, exempted from the ten-day requirement by Rule 10.3 itself. This Court’s decision to immediately issue its mandate has released from the jail an individual the State and (and apparently the trial court) believes is a continuing threat to the victim, justifying a high bail amount. That is an emergency jeopardizing the safety of the community that requires a decision in less than 10 days.¹

¹ Because this Court requested the response by August 21, a Friday, the earliest this court could decide after receiving the reply would be August 24, 17 days after the mandates issued.

Rule 31.4 emphasizes the need for immediacy with its remedy. If this Court denies the motion to stay the mandates, the State may present the motion to the Court of Criminal Appeals, and then the clerk of *that* court “will promptly submit [the motion] to the Court, or to one or more judges as the Court deems appropriate, **for immediate consideration and determination.**” TEX. R. APP. P. 31.4(c)(emphasis added). Rule 31.4 vests that Court with the authority to withdraw and stay this Court’s mandate.

The only discretionary aspect apparent from the face of Rule 31.4 is determining whether the State is seeking review of this Court’s ruling “in good faith.” The State submitted its petition for review with its motion. The State has represented this petition was filed in good faith, and believes it shows “reasons why the Court of Criminal Appeals should review the appellate court judgment.”

The State asks this court to consider and determine its Rule 31.4 motion immediately.

Conclusion

This Court should immediately consider and determine the State's Rule 31.4 motion to stay the mandates.

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